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## THE NEW MCP: ADEQUATELY REGULATED FACT SHEET 2

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### REQUIREMENTS FOR: ADEQUATELY REGULATED FEDERAL SUPERFUND SITES

The adequately regulated provisions of the 1993 MCP are designed to reduce regulatory overlap and duplication, as discussed in the Adequately Regulated Fact Sheet 1. These provisions limit the applicability of the MCP in cases where response actions are adequately overseen by other authorities. DEP believes the adequately regulated provisions will result in less duplication of effort by both the government and the private sector.

This fact sheet provides an overview of the adequately regulated provisions specific to response actions conducted under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

**WHEN WILL A RESPONSE ACTION CONDUCTED AT A SUPERFUND SITE OR OTHERWISE IN ACCORDANCE WITH CERCLA BE CONSIDERED ADEQUATELY REGULATED?** The DEP deems a CERCLA site to be adequately regulated when: (1) DEP concurs with a Record of Decision (ROD) or other Environmental Protection Agency (EPA) remedial action decision, (2) EPA expands a remedial action at DEP's request, (3) DEP or the Potentially Responsible Parties (PRPs) agree to implement work necessary to meet an Applicable or Relevant and Appropriate Requirement (ARAR) EPA has waived, or (4) DEP reviews a ROD or EPA remedial action decision and has no comment.

**WHICH AGENCY WILL OVERSEE THE CERCLA SITE/RESPONSE ACTION?** Under CERCLA EPA is the lead agency unless EPA allows another agency or DEP to be the lead.

**WHAT PROVISIONS OF THE MCP APPLY?** DEP will seek to incorporate MCP requirements to the extent practicable into state Superfund contracts under CERCLA. In addition, site specific requirements will be established on a case-by-case basis through incorporation of appropriate state requirements into site-specific cooperative agreements between DEP and EPA, during the establishment of ARARs and the selection of the remedy under CERCLA.

**WHAT ABOUT OIL RELEASES AT CERCLA SITES?** The MCP applies to any release or threat of release of an oil or hazardous material at a CERCLA site that is not regulated under CERCLA. For example, a release of waste oil at a CERCLA site may not be regulated under

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that authority, and so response actions specific to that release would be subject to the MCP. DEP will first seek to have the MCP cleanup requirement included as an ARAR or otherwise integrated into the CERCLA remedial action.

**WHAT HAPPENS IF A CERCLA SITE IS NOT ADEQUATELY REGULATED?** If there is a response action that the Department requires, but EPA has not included it in its plans for the site, the Department will first request changes to the CERCLA remedial action or agree to take actions to meet an ARAR EPA has waived. If EPA refuses to make those changes or to allow DEP to take those actions, the CERCLA site will not be considered adequately regulated, and all provisions of the MCP will apply, to the extent they are not preempted by CERCLA.

**MUST I NOTIFY DEP WHEN A NEW RELEASE OF OIL OR HAZARDOUS MATERIALS OCCURS AT A CERCLA SITE?** Yes, a new release of oil or hazardous material must be reported to the Department in accordance with 310 CMR 40.0300 since the CERCLA adequately regulated provisions only apply to remedial action decisions. After notification, the Department may defer to EPA oversight of any immediate response actions. The Department's notification regulations exempt many pre-existing releases discovered during assessment when the Department has been previously notified.

**FOR MORE INFORMATION:** See Adequately Regulated Fact Sheet 1, Overview of Adequately Regulated Requirements or Call the DEP InfoLine (from area code 617 and from outside Massachusetts, call 617/338-2255. From area codes 413 and 508, call 1-800/462-0444.

**WITH QUESTIONS AS TO THE ADEQUATELY REGULATED STATUS A CERCLA SITE:** Call the following contacts:

CERCLA sites	- Jay Naparstek(BWSC) 617-292-5697
General Questions	- Stephen Winslow(BWSC) 617-574-6838